# THE RECORD

## OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

VOLUME 6 NUMBER 5



MAY 1951

1822  1951



City Bank Farmers Trust Company, chartered one hundred and twenty-nine years ago, concentrates its attention on the trust business—both personal and corporate.

EXECUTOR CUSTODIAN OF SECURITIES
MANAGEMENT OF INVESTMENTS TRUSTEE

TRUSTEE UNDER PENSION AND PROFIT SHARING PLANS

TRANSFER AGENT FISCAL AND PAYING AGENT
REGISTRAR
TRUSTEE UNDER CORPORATE INDENTURES

MORTGAGE MANAGEMENT

# City Bank Farmers
CHARTERED 1822 *Trust Company*

*Head Office:* 22 William Street, New York
*Uptown Office:* 640 Fifth Ave. at 51st Street; *Brooklyn Office:* 181 Montague Street

*Information may be obtained through any branch of The National City Bank of New York*

MEMBER FEDERAL DEPOSIT INSURANCE CORPORATION

# THE RECORD
# OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

EDITORIAL BOARD

WHITNEY NORTH SEYMOUR, *President* | PAUL B. DE WITT, *Executive Secretary* | FREDERICK P. HAAS, *Secretary*

THE RECORD is published at the House of the Association, 42 West 44th Street, New York, 18.

*Volume 6* | May 1951 | *Number 5*


## Association Activities

THE ANNUAL MEETING of the Association will be held on Tuesday, May 8, at 8:00 P.M. A buffet supper will be served preceding the meeting. The officers of the Association and members of the Executive Committee, the Committee on Admissions, and the Committee on Audit will be elected. Mr. Lewis M. Isaacs, Jr., Chairman of the Committee on Real Property Law, will present a report on the imposition of federal control of rents in New York State. The report is published in this number of THE RECORD. Interim reports will be received from the Committee on Grievances, John B. Marsh, Chairman, and the Committee on Courts of Superior Jurisdiction, Albert R. Connelly, Chairman. The annual statement of the President and the annual report of the Treasurer will be received.

THE "ON TRIAL" program, which is televised over the networks of the American Broadcasting Company, had as participants recently the following judges: Irving Ben Cooper, Harold Kennedy, and Charles S. Colden. Witnesses included Clarence J. McCormick, Under-Secretary of the Department of Agriculture, Thomas J. Hamilton, Chief of the New York Times U.N. Bureau,

Mrs. Edward McVitty, Secretary of the United World Federalists, Congressman Carroll Reece, Lawrence Fertig, and Stanley Ruttenberg. Topics discussed were: Price Control, Use of United States Armed Forces in Europe, and the Federal Sales Tax.

THE ANNUAL ART EXHIBITION of Members' paintings and sculpture will open on May 1, at the House of the Association at 4:30 P.M. The exhibition is sponsored by the Committee on Art, Samuel A. Berger, Chairman. Robert Beverly Hale, who is Associate Curator of American Art for the Metropolitan Museum of Art, is acting as consultant to the Committee.

"CALL ME COUNSELOR!" the Sixth Annual Association Night Show, presented by the Committee on Entertainment, Barent Ten Eyck, Chairman, played to overflow audiences on April 12 and 13. The revue consisted of a series of sketches written and played by members of the Association, and was received with great enthusiasm.

THE TENTH ANNUAL Benjamin N. Cardozo lecture was delivered by The Honorable Edmund H. Lewis, Associate Judge, Court of Appeals of the State of New York, on April 24, under the auspices of the Committee on Post-Admission Legal Education, Ralph M. Carson, Chairman. Judge Lewis spoke on "The Contribution of Judge Irving Lehman to the Development of the Law." The lecture will be published in the June issue of THE RECORD and subsequently in a bound volume.

WITH THE permission of the author, Arthur Kramer, and *The New York Times,* the following poem is reprinted from the Times' Sunday Magazine Section:

## THE LAWYER TO HIS LOVE

TO THE PRACTITIONER, A LARGE ANTI-TRUST SUIT BECOMES A CAREER. YEARS ARE SPENT IN PREPARATION, PRE-TRIAL AND TRIAL

—Prof. Milton Handler in THE RECORD, a publication of the New York City Bar Association.

FAREWELL, farewell, my sweet!
The Government is suing.
My clients moo and bleat,
And I've no time for wooing.

To leave a form so fair,
So waisted, limb'd and busted,
Engulfs me in despair—
But they've been anti-trusted.

Farewell, farewell, my own!
The task brooks no denial.
Prepare for nights alone,
While I prepare for trial.

Between us an abyss
Must gape, as black as Satan.
But what, alas, is this
To Sherman or to Clayton?

Farewell, farewell, my dear!
We'll meet again—it's fated;
Though in what distant year
Can't be prognosticated.

And, when the case is tried,
Never, O my forsaken,
Will I depart your side—
Unless appeals are taken.

ON MAY 15 Sir Gladwyn Jebb, Permanent United Kingdom Representative to the United Nations, will give the last in the series of lectures sponsored by the Committee on Post-Admission Legal Education, of which Ralph M. Carson is Chairman. Sir Gladwyn will speak on "The United Nations: The New Diplomacy."

THE COMMITTEE on Federal Legislation, Eduardo Andrade, Chairman, has reported favorably on three bills which would increase the compensation for Federal judges. The Committee was also represented by Theodore Pearson at hearings on bills to increase the number of judges in the United States District Court for the Southern District.

DURING THE fourth year of its operation, which ended on March 31, the Lawyers Placement Bureau reduced the cost of its operation, more than doubled the number of referrals of registrants to employers, increased its placement rate 19%, and lowered the placement ratio from 1 in 8.6 registrants to 1 in 6.8 registrants.

THE COMMITTEE on Trade Regulation and Trade-Marks, Milton Handler, Chairman, has approved H.R. 3408, which would amend the Clayton Act by granting a right of action to the United States to recover damages under the antitrust laws and establish a uniform statute of limitations. The Committee suggested two changes in the bill. The Committee also prepared a report on the proposed Uniform State Trade-Mark Act.

ON MAY 3 the Committee on Foreign Law, Dudley B. Bonsal, Chairman, will sponsor a reception for lawyers on the permanent delegations to the United Nations. Officers of the Association, members of the Executive Committee, and chairmen of commit-

tees will attend. This reception marks the inauguration of the Committee's plan to develop more effective liaison between the Committee and the United Nations.

In April the Committee sponsored a well-attended Symposium on Nationalization Decrees and Foreign Judgments. Speakers were Circuit Judge Jerome N. Frank, Professor Karl Loewenstein of Amherst, Professor Willis L. M. Reese of Columbia, and Frank C. Sterck, former Special Assistant Attorney General of the United States.

THE EXECUTIVE COMMITTEE has authorized the appointment of a Special Committee to Cooperate with the State Crime Commission. Chairman of the Committee is Chauncey Belknap; members are William C. Chanler, Frederick P. Haas, William B. Herlands, Samuel M. Lane, Louis M. Loeb, and J. Edward Lumbard, Jr.

# The Calendar of the Association for May and June

*(As of April 15, 1951)*

| | | |
|---|---|---|
| May | 1 | Opening of Art Committee's Exhibition of Paintings and Sculpture by Members of the Association, 4:30 P.M.<br>Meeting of Section on State and Federal Procedure |
| May | 2 | Dinner Meeting of Executive Committee<br>Meeting of Joint Committee on Lawyers Placement Bureau<br>Meeting of Section on Wills, Trusts and Estates |
| May | 7 | Round Table Conference. Guests: The Honorable John R. Bartels, The Honorable Paxton Blair, The Honorable Edwin L. Garvin, The Honorable Samuel Marshall Gold, The Honorable J. Vincent Keogh, The Honorable Irving L. Levey and The Honorable Matthew M. Levy, all now or heretofore Justices of the Supreme Court of the State of New York and members of the Association's Special Committee on Round Table Conferences. 8:15 P.M.<br>Meeting of Section on Economics of Legal Profession<br>Dinner Meeting of Committee on Federal Legislation<br>Dinner Meeting of Committee on Legal Aid<br>"On Trial"—Television Program, WJZ-TV (Channel 7), 9:30 P.M. |
| May | 8 | *Annual Meeting of the Association, 8:00 P.M. Buffet Supper, 6:15 P.M.*<br>Meeting of Special Committee on Broadcasting<br>Meeting of House Committee |
| May | 9 | Meeting of Section on Drafting of Legal Instruments |
| May | 10 | Dinner Meeting of Committee on Law Reform |
| May | 14 | Dinner Meeting of Committee on the Domestic Relations Court |

Dinner Meeting of Committee on Professional Ethics
Meeting of Section on Trade Regulation
"On Trial"—Television Program, WJZ-TV (Channel 7), 9:30 P.M.

May 15 *"The United Nations: The New Diplomacy."* Speaker: Sir Gladwyn Jebb, K.C. 8:00 P.M. Buffet Supper 6:15 P.M.

May 16 Meeting of Committee on Admissions
Dinner Meeting of Committee on Insurance Law
Meeting of Section on Labor Law

May 21 Meeting of Library Committee
"On Trial"—Television Program, WJZ-TV (Channel 7), 9:30 P.M.

May 22 Meeting of Section on Trials and Appeals

May 23 Meeting of Section on Corporations
Annual Dinner of Section on Wills, Trusts and Estates

May 28 Dinner Meeting of Committee on Administrative Law
"On Trial"—Television Program, WJZ-TV (Channel 7), 9:30 P.M.

June 4 Dinner Meeting of Committee on Federal Legislation
"On Trial"—Television Program, WJZ-TV (Channel 7), 9:30 P.M.

June 6 Dinner Meeting of Executive Committee
Meeting of Joint Committee on Lawyers Placement Bureau

June 11 Dinner Meeting of Committee on Professional Ethics
"On Trial"—Television Program, WJZ-TV (Channel 7), 9:30 P.M.

June 12 Meeting of House Committee

June 18 "On Trial"—Television Program, WJZ-TV (Channel 7), 9:30 P.M.

June 25 "On Trial"—Television Program, WJZ-TV (Channel 7), 9:30 P.M.

# Municipal Immunity from Tort Liability

By Seymour B. Quel

The most significant recent change in the New York law with respect to municipal tort liability is that resulting from the discarding of the doctrine of sovereign immunity. This article traces briefly the rise and fall of that doctrine in this State.

The principle of sovereign immunity from suit with respect to the exercise of governmental functions by municipalities was long embodied in the New York law. It was aptly described as "a rudimentary survival of the maxim 'The King can do no wrong.'"[1]

In 1875 the Court of Appeals, in holding that a plaintiff could not recover from a municipality for negligence, defined the line of demarcation between those cases in which a municipality was liable in tort and those in which it was not. The distinction was said to be between the exercise of special powers, in which case a municipality could be held liable for negligence, and the use of political rights under the general law, in which case the municipality was acting as a sovereign and not liable. With a premonition of the difficulties which the distinction thus drawn was destined to create, the Court warned that "It is not always easy to say within which class a particular case should be placed."[2]

Twenty-five years later the Court of Appeals redefined the distinction as that between the exercise of a quasi-private or corporate function and the exercise of a governmental function. While still upholding the rule as to nonliability in the case before it, the Court pointed out that "Few questions have given rise to more diversity of judicial opinion or greater conflict in judicial decisions than that of the liability of municipal corporations for

---

*Editor's Note:* Mr. Quel, a member of the Association's Committee on International Law, is Chief of the Appeals Division of the Corporation Counsel's Office.

[1] *Matter of Evans* v. *Berry*, 262 N.Y. 61, 68 (1933).

[2] *Maxmilian* v. *Mayor*, 62 N.Y. 160, 170 (1875).

the acts of their officers or servants" and raised the question as to whether any distinction could logically stand the test of final analysis.[3] But, despite these expressions, the Court in denying recovery to a plaintiff later asserted that the broad general doctrine of sovereign immunity for municipalities was "certainly not now open to question in the courts of this state." [4]

The change in the rule of governmental immunity with respect to municipalities came about partly as the result of direct legislative action and partly as the indirect product of legislation affecting the State's immunity from suit. The direct legislative action consisted in the enactment of §282g of the Highway Law in 1929.[5] That statute, enacted in "response to a rising tide of criticism against the doctrine of sovereign irresponsibility,"[6] imposed liability upon municipalities for the negligent operation of municipally owned vehicles by employees acting in discharge of their duties even if the duty involved was governmental in character. That statute became §50-a of the General Municipal Law and was supplemented by other provisions of the General Municipal Law requiring municipalities to assume the liability for and to indemnify (1) employees operating a municipally owned vehicle or other facility of transportation in discharge of a statutory duty, and (2) policemen or firemen operating a vehicle in discharge of a statutory duty.[7] This legislation was of limited scope and was held to require a strict construction and not to change the general rule of governmental immunity except as to the class of cases specified therein.[8]

[3] *Lefrois* v. *County of Monroe*, 162 N.Y. 563, 566 (1900).

[4] *Wilcox* v. *City of Rochester*, 190 N.Y. 137, 142 (1907).

[5] L. 1929, ch. 466.

[6] *Miller* v. *Town of Irondequoit*, 243 App. Div. 240, 241 (4th Dept., 1935), aff'd 268 N.Y. 578 (1935).

[7] General Municipal Law, §§50-b and 50-c. Section 50-d imposes liability on municipalities for negligence of physicians and dentists rendering services gratuitously in a public institution but municipal non-liability in those instances, prior to the enactment of the statute, did not rest on sovereign immunity. See *Sutherland* v. *New York Polyclinic Medical School*, 273 App. Div. 29 (1st Dept., 1947), aff'd 298 N.Y. 682 (1948).

[8] *Miller* v. *Town of Irondequoit, supra.*

The legislation affecting the State's immunity, which was ultimately to have a far-reaching and at first unforeseen effect upon municipal liability, stems from the enactment of the Court of Claims Act in 1920 and more particularly from §12-a (now §8) which was added in 1929.[9] Section 12-a provided, in substance, that the State waives its immunity from liability for the torts of its officers and employees and consents to have its liability for such torts determined in the Court of Claims as in an action in the Supreme Court against a private corporation and assumes liability for such acts.

That the enactment of §12-a had any effect upon the doctrine of governmental immunity as applied to municipalities was not at first apparent. At the instigation of Attorney General Hamilton A. Ward a bill[10] was introduced in the 1930 session of the Legislature specifically providing that no municipal corporation should be exempt from liability because engaged in a governmental function. The bill failed of passage but its introduction indicates that §12-a was not thought to apply to municipalities.

The then current view that §12-a did not end the governmental immunity of municipalities was reinforced by numerous court decisions. In at least three cases arising subsequent to the enactment of §12-a which reached the Court of Appeals, the old rule was applied and a municipality was held not liable for negligence in the performance of a governmental function, such as the operation of traffic lights,[11] or the operation of a car by a policeman in pursuit of a criminal.[12] In each case the Appellate Division dismissed the complaint on the ground of sovereign immunity and the Court of Appeals affirmed without opinion. In several other

---

[9] L. 1929, ch. 467.

[10] Assembly 821, Senate 613. A discussion of this bill by Mr. Ward is contained in 2 N.Y. State Bar Association Bulletin 402 (1930).

[11] *Cleveland* v. *Town of Lancaster*, 239 App. Div. 263 (4th Dept., 1933), aff'd 264 N.Y. 568 (1934); *Parsons* v. *City of New York*, 248 App. Div. 825 (2nd Dept., 1936), aff'd 273 N.Y. 547 (1937).

[12] *Berger* v. *City of New York*, 260 App. Div. 402 (2nd Dept., 1940), aff'd 285 N.Y. 723 (1941).

cases the Court of Appeals denied leave to appeal where a complaint against a municipality in a negligence action had been dismissed on the ground that the act complained of involved the exercise of a governmental function.[13]

During this period the argument was made that the waiver of immunity by the State contained in §12-a of the Court of Claims Act had the effect of abrogating the immunity of municipalities. The contention was rejected and the waiver in §12-a was held applicable only to the State and not to its political subdivisions.[14]

But an adumbration of the ultimate result of §12-a might have been perceived in the contemporaneous holdings extending its application. Thus the doctrine of sovereign immunity was held to be no longer applicable to a claim against the State based on negligence of the employees of a privately owned reformatory to which a plaintiff had been committed pursuant to law.[15] The Court of Appeals followed this decision by holding that in view of the enactment of §12-a it would not be a harmonious policy to continue to apply the rule, stemming from the doctrine of sovereign immunity, that a private charitable corporation performs a sovereign function and is therefore immune from suit for the torts of its employees.[16] A charitable corporation was accordingly held liable to suit in negligence whether acting directly as the agent of the State,[17] or merely in a private charitable capacity.[18] These decisions were then held to render a county or municipality liable in negligence where it was engaged in performing a

---

[13] *Shaw* v. *City of New York*, 255 App. Div. 762 (1st Dept., 1938), leave to appeal denied 279 N.Y. 813 (1939); *Yochelson* v. *City of New York*, 163 Misc. 498 (Sup.Ct. New York Co., 1937), aff'd 256 App. Div. 916 (1st Dept., 1939), leave to appeal denied 280 N.Y. 854 (1939); cf.: *Haynes* v. *City of New York*, 259 App. Div. 837 (2nd Dept., 1940).

[14] *Volk* v. *City of New York*, 259 App. Div. 247 (1st Dept., 1940), reversed on another ground, 284 N.Y. 279 (1940).

[15] *Paige* v. *State of New York*, 269 N.Y. 352 (1936).

[16] *Sheehan* v. *North Country Community Hospital*, 273 N.Y. 163 (1937).

[17] *Bloom* v. *Jewish Board of Guardians*, 286 N.Y. 349 (1941).

[18] *Sheehan* v. *North Country Community Hospital*, *supra*. *Dillon* v. *Rockaway Beach Hospital*, 284 N.Y. 176 (1940).

governmental function delegated to it by the State such as the care or transportation of prisoners.[19] Finally in *Bernardine* v. *City of New York,* 294 N.Y. 361 (1945), the Court of Appeals, notwithstanding earlier holdings to the contrary, stated that the waiver of sovereign immunity by the State in 1929 had the effect of terminating such immunity for counties, cities, towns and villages as well and they were held to be "answerable equally with individuals and private corporations for wrongs of officers and employees."

The pendulum having thus finally swung completely over, the next question confronting the courts was whether there was any limitation at all to this newly opened field of municipal responsibility. That question has been answered in the affirmative—there is a limitation. But its precise boundaries are a more troublesome question.

That the new doctrine was not without its dangers became quickly apparent. In *Steitz* v. *City of Beacon,* 295 N.Y. 51 (1945), the plaintiff sued to recover damages suffered as a result of a fire and alleged that the damage had been caused by the defendant city's negligence in failing to provide fire equipment and protection for the plaintiff's property and in failing to keep in repair and negligently operating a water valve. The hazard to which municipalities might be subjected as a result of the discarding of sovereign immunity was thus brought sharply into focus. For if every municipality were liable for negligence without limitation, the probability is that not many of them would long remain solvent. The Court of Appeals solved the problem by affirming the dismissal of the complaint and reiterating that a municipal corporation no longer enjoyed sovereign immunity, but stated that it could be held liable in negligence only when it violated a duty owed to the plaintiff personally and not merely to the community at large.

---

[19] *Holmes* v. *County of Erie,* 266 App. Div. 220 (4th Dept., 1943), aff'd 291 N.Y. 798 (1944); *Miller* v. *City of New York,* 266 App. Div. 565 (1st Dept., 1943); aff'd 292 N.Y. 571 (1944).

The distinction drawn by the *Steitz* case was obviously designed, as the Court itself stated, to avoid the crushing burden on municipalities which would otherwise have arisen as the result of the *Bernardine* case. The strict logic of the distinction is somewhat dubious. Liability of municipalities for negligence while acting in a proprietary capacity has not been held to be dependent upon whether the function performed was for the benefit of the plaintiff individually or the community at large and there would appear to be no strictly logical reason for applying such a distinction to the newly extended field of liability opened up by the *Bernardine* case. Nevertheless, as a practical matter the distinction exists and must continue to exist if municipalities are to remain solvent.[20]

In *Murrain* v. *Wilson Line, Inc. and City of New York,* 270 App. Div. 372 (1st Dept., 1946), aff'd 296 N.Y. 845 (1947), reargument denied 296 N.Y. 995 (1947), the Appellate Division of the First Department, in holding that a municipality could not be held liable for failure to supply adequate police protection, interpreted the rule to be "that a municipality is answerable for the negligence of its agents in exercising a proprietary function, and at least for their negligence of commission in exercising a governmental function. . ., but a municipality is not liable for its failure to exercise a governmental function, such as to provide police or fire protection."[21] This distinction between proprietary and governmental functions, on the one hand, and acts of commission and omission, on the other hand, is open to several objections. The plain implication of the *Bernardine* case was that the dis-

---

[20] For an analogous limitation upon the State's liability see *Goldstein* v. *State of New York,* 281 N.Y. 396 (1939) and *Newiadony* v. *State of New York,* 276 App. Div. 59 (3rd Dept., 1949), where unsuccessful attempts were made to hold the State liable for negligent acts of members of the State militia while on active duty. Cf. *Feres* v. *United States,* 340 U.S. 135 (1950).

[21] This same distinction seems to have been the basis for the dismissal of the complaint in *Meadows* v. *Village of Mineola,* 190 Misc. 815 (Sup. Ct., Nassau Co., 1947), where the plaintiff sought to hold the village liable for failure to enforce its zoning ordinance and building code.

tinction between proprietary and governmental functions was obsolete and the *Steitz* case does not, at least in terms, reestablish any such distinction. With respect to the difference between acts of commission and omission suggested in the *Murrain* case, the difficulty of applying such a distinction is apparent and in the *Steitz* case itself the complaint contained allegations of negligence of both omission and commission.

In *McCrink* v. *City of New York*, 296 N.Y. 99 (1947), the Court of Appeals did not apply the test suggested by the Appellate Division in the *Murrain* case. There the City was held liable for injuries caused by shots fired by an intoxicated policeman while off duty. The policeman had been the subject of three departmental disciplinary proceedings based on intoxication and the evidence was held sufficient to justify a jury finding that his retention as a patrolman involved potential danger to others. The claimed negligence of the City was the failure to discharge the policeman. In rejecting the argument that the exercise of the Police Commissioner's discretion did not subject the City to liability, the Court stated that a discretion so broad as that claimed by the City "would often serve to restore without legislative action the immunity from suit which the Legislature has waived by the enactment of section 8 of the Court of Claims Act."

There the question of the liability of municipalities for torts rests at the moment. Thus far the only limitation suggested by the Court of Appeals has been whether the duty breached was owed to the plaintiff personally or to the community at large. The safer course is to abide by this limitation rather than to attempt to redefine it in terms of proprietary or governmental functions or acts of commission or omission. In this connection it should be noted that while a strong theoretical argument could be advanced for the view that the duty to maintain highways in good repair and to keep traffic lights in effective operating condition are duties owed to the public at large, as a practical matter these duties have been consistently treated on the same basis as those owed to individuals and there is little or no likelihood that

the principle of the *Steitz* case would be held to limit liability in such situations.[22]

To sum up: The doctrine of sovereign immunity of municipalities from liability in tort for the exercise of a governmental function no longer exists in this State. The rule was terminated in part by legislative enactment expressly imposing liability upon municipalities in certain instances. At the same time the Legislature enacted §12-a of the Court of Claims Act which ended sovereign immunity as far as the State was concerned. At first §12-a was not thought to have had any effect upon liability of municipalities. However in 1944 the Court of Appeals held that the enactment of §12-a had abrogated the doctrine of sovereign immunity for municipalities. With sovereign immunity thus suddenly ended, the courts were faced with the practical consideration that some limitation upon municipal liability was still necessary. The test so far laid down by the Court of Appeals has been simply whether the duty claimed to have been breached by the municipality was one owed to the plaintiff personally or to the community at large. In the former case liability now exists, whereas in the latter case it does not.

---

[22] *Foley* v. *State of New York*, 294 N.Y. 275 (1945); *Carr* v. *City of New York*, 281 N.Y. 469 (1939). For historical background of these decisions see *Conrad* v. *The Trustees of the Village of Ithaca*, 16 N.Y. 158 (1857) and particularly *Hickok* v. *The Trustees of the Village of Plattsburgh* discussed in the footnote therein at p. 161, *et seq.*

# Review of Recent Decisions of the United States Supreme Court

By Howard C. Buschman, Jr. and Fred N. Fishman

Problems under the Full Faith and Credit Clause and the Commerce Clause were among those considered by the Supreme Court in recent decisions. The nice questions of balance involved in the resolution of such basic issues in our federalism are underscored by the divisions in the Court.

## JOHNSON V. MUELBERGER

The migratory divorce problem was once again considered by the Supreme Court in this opinion announced on March 12. Johnson's second marriage culminated in a Florida divorce proceeding in which Johnson, a New York resident, appeared generally as respondent without attacking his wife's allegations as to her Florida residence. Actually, she had failed to comply with Florida's jurisdictional requirement of 90 days' residence within the state before instituting an action for divorce. Johnson thereafter married petitioner, and on Johnson's death petitioner sought to exercise her widow's right of election to a statutory share of his estate under Section 18 of the New York Decedent Estate Law. The objection of Johnson's daughter by his first marriage, sole legatee under his will, brought into issue the validity of the Florida divorce. Following trial before the Surrogate and review by the Appellate Division, the New York Court of Appeals held that, since the daughter would in its view be permitted by Florida law collaterally to attack the decree, she was entitled to do so in New York.

The Supreme Court reversed in an opinion by Mr. Justice Reed. An examination of Florida cases convinced the Court that the decision below had misinterpreted Florida law. The Supreme Court concluded that the daughter could not attack the divorce decree in Florida and hence could not attack it elsewhere: "The Full Faith and Credit Clause forbids."

Previous decisions had established that by virtue of this clause a state must bar a party to a divorce granted by a sister state from attacking the decree collaterally on jurisdictional grounds where he had participated in the divorce proceedings and the decree was not subject to collateral attack in the rendering state. The underlying principle of according a judgment the same integrity it enjoyed where rendered was applied by the Court here to an attack by one not a party to the original decree. It was considered immaterial whether the daughter would be barred from making a collateral attack in Florida on the theory of privity or, if she was regarded as a stranger to the divorce proceedings, on the theory that she had a mere

expectancy at the time of the divorce. In either event, New York must follow suit and forbid a like attack in its courts.

The decision reflects the present temper of the majority to subordinate recognition of a state's concern in the marital status of its domiciliaries to a desire to relieve much of the uncertainty about the validity of out-of-state divorces. Mr. Justice Frankfurter dissented without opinion substantially for the reasons given by the New York Court of Appeals in the light of views expressed by him in *Sherrer v. Sherrer*, 334 U.S. 343, 356 (1948). He expressed there his belief that the rule precluding re-examination of jurisdictional findings fosters perjury and consent decrees, and denies the vital interest of the domiciliary state in the marital status of its citizens.

### NORTON CO. V. DEPARTMENT OF REVENUE OF ILLINOIS

The Supreme Court was called upon in this case to weigh the accommodation our federalism requires between the free flow of interstate commerce and the right of the states to make interstate business pay for the protection given it. Petitioner, a Massachusetts corporation engaged in the business of manufacturing and selling abrasive machines and supplies, is qualified to do business in Illinois and operates a branch office and warehouse in Chicago. Its manufacturing and general office activities are carried on in Worcester, Massachusetts, where all direct mail orders and orders forwarded by its Chicago office are accepted or rejected. Orders are filled by shipment f.o.b. Worcester either directly to the customer or via the Chicago office. The Chicago office carries an inventory of most frequently purchased items for direct local sales. Orders are also received there from those who want special equipment or items not in stock and are forwarded to the home office for action. To save freight charges, various customers' goods are accumulated in Worcester until a carload lot can be consigned to the Chicago office where the carload is broken and the separate orders reconsigned in their original packages to the customers. The Chicago office also supplies engineering and technical advice.

Petitioner's local sales at retail from this office made petitioner subject to the Illinois Occupation Tax, computed on the basis of gross receipts, and imposed upon "persons engaged in the business of selling tangible personal property at retail in this State." Illinois, with the approval of its courts, collected a tax on petitioner's entire gross income from sales to its inhabitants. The problem is whether Illinois thereby exceeded the limitation placed on its taxing power by the Commerce Clause of the United States Constitution.

In an opinion by Mr. Justice Jackson, the Supreme Court on February 26 upheld, as within the realm of permissible judgment, the determination by Illinois that all income from sales utilizing the Chicago office either in receiving the orders or distributing the goods was attributable to that office. Petitioner was regarded as having failed to sustain the burden of establish-

ing that any such transactions were "dissociated from local business and interstate in nature." The Court distinguished cases forbidding the buyer's state from taxing vending corporations which stay at home and send drummers to solicit orders to be sent back to the home office for acceptance, filling and delivery to the buyer. Petitioner was regarded as having localized itself in the Illinois market by establishing an outlet to keep close to the trade and hence could not claim the full immunities of an interstate business. But the Court conceded that some items were clearly interstate in character. Thus, it held that Illinois could not include in the measure of the tax receipts from orders sent directly to Worcester by an Illinois customer and shipped directly to the customer from Worcester.

Mr. Justice Clark's partial dissent, which was joined by Mr. Justice Black and Mr. Justice Douglas, argued that the logic of the majority's theory compelled the conclusion that Illinois could fairly attribute to the local office even sales sent directly to Illinois customers on orders sent directly to Worcester. At the opposite pole, Mr. Justice Reed, in his partial dissent, maintained that no tax should be permitted on orders forwarded by the Chicago office to Worcester and shipped from Worcester directly to the buyer. This refusal to draw a constitutional distinction between solicitation by salesmen in a branch office and solicitation by salesmen on the road skirts the evil of double taxation which may follow from the majority decision. But it may be argued that the area of judgment which under our federalism must be accorded the states bars such rigid logic and that the way remains open for petitioner to eliminate possible double taxation by operating in Illinois only through salesmen sent from Massachusetts.

### SPECTOR MOTOR SERVICE, INC. V. O'CONNOR

After a torturous eight-year journey through state and federal courts, this litigation finally terminated in a decision on March 26 invalidating the Connecticut corporate franchise tax as applied to corporations engaged solely in interstate commerce. Spector Motor had originally brought suit in the United States District Court in Connecticut where an injunction was granted against collection of assessments of the tax and penalties on the ground that the Connecticut Act did not apply to Spector Motor. In reversing, the Court of Appeals for the Second Circuit held both that the tax was applicable and that it did not violate the Commerce Clause. On certiorari, the Supreme Court remanded the cause to the District Court with directions to retain the bill pending proceedings in the Connecticut courts. Such proceedings resulted in a decision that the tax was applicable to Spector Motor, and the District Court then concluded that the tax was unconstitutional as applied. The Court of Appeals reversed, and the Supreme Court granted certiorari once again.

The Supreme Court was confronted again here with the problem of reconciling the competing interests of state and nation which figured in the

*Norton* case. The Connecticut tax was imposed upon Spector Motor, a Missouri corporation engaged exclusively in interstate trucking, for the privilege of doing business within Connecticut and was computed on that part of the corporation's net income reasonably attributable to its business activities within the state. The tax did not discriminate between interstate and intrastate commerce and was not objected to on the ground that it placed an unduly heavy burden on interstate commerce. Nevertheless, the Supreme Court held that it was invalid under the Commerce Clause. Speaking through Mr. Justice Burton, the Court pointed out that the Connecticut courts had disclaimed that the tax was levied as compensation for the use of highways or collected in lieu of an ad valorem property tax. As a tax on the privilege of carrying on a business exclusively interstate in character, it could not stand. The "direct" incidence of the tax on interstate commerce was its fatal flaw, as in *Freeman v. Hewit*, 329 U.S. 249 (1946).

Mr. Justice Clark's dissent, joined by Mr. Justice Black and Mr. Justice Douglas, charged that the Court's decision turned on a matter of labels in that the tax would have been upheld if the state had characterized it differently. Since the tax was fairly apportioned and nondiscriminatory, "exclusively interstate commerce" was thought to receive ample protection. No sound basis was seen for invalidating the tax as applied here when, if Spector Motor had engaged in intrastate business too, a tax for the privilege of doing so could have been measured by both the intrastate business and interstate business reasonably attributable to Connecticut.

The Court may have had difficulty in articulating fears that the danger of significant burdens on interstate commerce would increase if it sanctioned formulas for taxing such commerce which were not dependent upon local incidents. However, the dissenters' arguments derive the appearance, at least, of added strength from the absence of rationalization in the majority opinion on other than the conceptual level.

## 62 CASES OF JAM V. UNITED STATES

Whether or not a product labeled "Delicious Brand Imitation Jam" purported to be jam is the question to which the Court addressed itself in this case decided on March 26. The Federal Security Administrator is authorized by the Federal Food, Drug, and Cosmetic Act to fix by regulation the ingredients of any food to be introduced into interstate commerce and under Section 403 (g) a product is deemed misbranded if it "purports to be or is represented as" such food without conforming fully to whatever standards have been fixed. Under another provision of the Act, namely, Section 403 (c), a food which is an imitation of another food is deemed misbranded unless it is prominently labeled as an imitation. The Act provides that food in interstate commerce may be seized and condemned by the United States if it is misbranded.

Concededly, the condemned product did not meet the Administrator's

specifications for jam. But although it looked and tasted like jam, in the opinion of Mr. Justice Frankfurter speaking for the Court, it "purported" to be only what it was—an imitation jam. "It does not purport nor represent to be what it is not—the Administrator's genuine 'jam.'"

The Administrator's error in proceeding against imitation jam was doubtless caused by a misreading of *Federal Security Administrator v. Quaker Oats* Co., 318 U.S. 218 (1943). In that case a product labeled "Quaker Farina Wheat Cereal Enriched with Vitamin D" was held to be misbranded for failure to conform fully either to the Administrator's specifications for "farina" or "enriched farina." There was thus a violation of the provision in Section 403 (g). That section was designed to protect the public from inferior foods resembling standard products but marketed under distinctive names. However, it does not follow that once a food has been standardized no imitation of it may be marketed. The mischief Congress sought to remedy by the Act was the misbranding of food products, but the Court could find no reason to conclude that Congress intended to prohibit the marketing of a product candidly labeled as an imitation of a standardized food.

Mr. Justice Douglas, joined in dissent by Mr. Justice Black, was of the opinion that the product purported to be jam within the meaning of Section 403 (g).

# Committee Reports

## COMMITTEE ON REAL PROPERTY LAW

### REPORT ON PROPOSED IMPOSITION OF FEDERAL CONTROL OF RENTS IN NEW YORK STATE

It is reliably reported that Congress has under consideration a Bill which will broaden and extend Federal rent control over both residential and business rents in areas now controlled by State Laws. Under the Housing and Rent Act of 1949 Federal control of residential rents in any State could be terminated by the adoption of State control and a notification from the Governor of the State to the Housing Expediter that the State had "adequately provided for the establishment of maximum rents." Pursuant to this provision of the Federal Law, the New York State Legislature adopted the Emergency Housing Rent Control Law of 1950 (Chapter 250, Laws of New York 1950) and on May 1, 1950 established state control over residential rents. Business and commercial space, which were never before controlled by Federal Law, have been subject to New York State rent control since early in 1945 (Chapters 3, 314 and 315 Laws of 1945).

There seems to be no adequate reason for the re-establishment of Federal rent control in New York. All of the available data would seem to indicate that residential rents in New York State (and especially in New York City) have increased less than in any other state. New York State rent control is working. If moderate increases in some rentals are to be made in the future there is no reason to believe that they will equal the increases granted during the past year in other communities under Federal control.

The Bureau of Labor Statistics reports indicate that on the basis of 1935–1939 being accepted as 100, the New York City rent index is (using the October 1950 figure) 109.1, as against a national average of 125.4. This national average is composed of the indexes for the 34 cities in which the Bureau gathers rent data. It includes New York City and would therefore be higher were New York City eliminated. Chicago has a rent index of 143.6. Los Angeles (prior to its decontrol) had an index of 135.5; Birmingham an index of 171.8; San Francisco an index of 118.0. Washington, D. C. alone had an index lower than New York City's, its index being 107.9. The Federal Housing Administrator does not have jurisdiction over rents in Washington, D. C. Thus, in no community in which statistics are gathered by the Bureau of Labor Statistics and in which rents are controlled by the Housing Administrator is the rent level as low as in New York City.

During the first eleven months of 1950 the Federal Housing Expediter granted "upward of a million" increases in residential rents, average 18.2%

*Editor's Note:* This report will be presented to the Annual Meeting of the Association on May 8, 1951.

above previous rent ceilings. Only minor increases based upon an increase in service or facilities and consented to by the tenant were granted in New York State during that period. Under the new regulations some increases may be granted during the current year, but such increases are (with few exceptions) limited to 15%. The standard of a 4% return on value of property adopted by the state can hardly be termed excessive or inflationary.

Thus, while there are two main reasons for Congressional interest in reinstating nationwide rent control—protection of tenants during a housing shortage against exorbitant rents and inflation control—neither justifies, under the facts, the extension of Federal control to New York State.

The need for controls is especially great in New York State with its numerous urban communities, and is probably more acute in New York City, where the combination of limited area and the country's largest city population naturally results in the sort of space shortage which creates a landlord's market. Tenants must be protected against the unreasonable rents which such a market inevitably breeds. Landlords should likewise have a measure of protection; for they are forced to operate with costs which have risen sharply while rents have remained relatively stationary under controls; and careful planning is vital to successful operation. But such planning is possible only if the rights and remedies affected by the control system become stabilized and remain so.

Throughout New York residential rents have heretofore been under Federal controls. In New York City, where the rent control problem has existed in its most serious form, Federal controls were supplemented by city controls. Now these previous systems have both been superseded by state control. Thus already there have been two different control authorities for the state as a whole and no less than three in New York City. Necessarily this shifting of the control systems has resulted in widespread confusion as to the respective rights and remedies of tenants and landlords. To have still another control system superseding in New York is bound to add to this confusion.

Insofar as the proposed Federal legislation would extend rent controls to commercial or business tenancies, there is again no need to make such legislation apply to New York City, where controls of that sort were established six years ago and have been maintained ever since. Landlords and tenants affected by such long-standing controls have a relationship with one another and a business status quite different from those of parties who have dealt with one another in the uncontrolled territories elsewhere. To prevent unfairness, these categories should be kept separate by excluding from Federal control of commercial and business rents a territory in which such rents are adequately controlled under a state system. Stabilization under an existing system is equally important in this type of controlled rents.

The present state system, to maintain which New York is paying over $3,000,000 a year, is working effectively. Under it the respective rights of the landlords and tenants have become pretty well defined. To disturb this by substituting a new system, with the inevitable confusions in its wake, would

seem to be justified only if there is a need for further change because of the inadequacy of the existing state controls. There appears to be no substantial necessity of that sort.

Moreover, it must be anticipated that the substitution of Federal controls now will mean that New York is to be subjected to not one but two more changes in the control system. The experience of the past shows that when the immediate pressures behind Federal control are relaxed, as they almost certainly will be if the country completes its rearmament program without becoming involved in another major war, the counter-pressures of local politics will once more bring about the lifting of Federal controls. And then New York, which cannot afford to have rent controls abolished as soon as has seemed desirable and practicable elsewhere in the United States, will be forced to invoke anew its system of state controls which will not then be nearly as well able to cope with the situation as would have been the case if the state system had been functioning right along, and thus had gained the advantage of years of experience in administering such controls and improving their machinery.*

The following resolution is therefore proposed:

> RESOLVED that The Association of the Bar of the City of New York believes the present control of rents (both residential and business) in New York State are adequate protection against inflation as well as against improper evictions in times of housing shortage, and opposes any control of such rents by the Federal Government, and therefore authorizes its Committee on Real Property Law to confer and advise with representatives of Congress and all other organizations concerned, with the object of preventing re-control of rents in New York State by the Federal Government so long as the State shall control rents.

Respectfully submitted,

*COMMITTEE ON REAL PROPERTY LAW*

LEWIS M. ISAACS, JR., *Chairman*

MILTON M. BERGERMAN
HERMAN BERNIKER
EDMOND B. BUTLER
ALBERT W. FRIBOURG
MILTON R. FRIEDMAN
GEORGE J. GILLESPIE, JR.
WILLIAM VICTOR GOLDBERG
JEROME L. GREENE
HAROLD LEWIS HERRICK
ISRAEL HOFFMAN
EDWARD G. MCLAUGHLIN
ALFRED P. O'HARA
ARAD MCCUTCHAN RIGGS
JOHN S. SICKELS
ROBERT D. STEEFEL

April 5, 1951.

---

* The statistical data in this report are taken from the report of the State Rent Administrator to the New York Legislature.

## COMMITTEE ON FOREIGN LAW

### REPORT ON THE TRADING WITH THE ENEMY ACT OF 1917

The Committee on Foreign Law recommends that the Trading With the Enemy Act of 1917, as amended, be amended as follows:

*AMENDMENT NO. 1*

That the first proviso following the first colon in Section 32 (a) (2) (D) of the Trading With the Enemy Act of 1917, as amended, be worded as follows:

> "Provided, That notwithstanding the provisions of this subdivision (D), return may be made to an individual who establishes to the satisfaction of the Alien Property Custodian either (i) that as a consequence of any law, decree or regulation of the nation of which he was then a citizen or subject, discriminating against political, racial, or religious groups he has at no time between December 7, 1941 and the time when such law, decree, or regulation was abrogated, enjoyed full rights of citizenship under the law of such nation; or (ii) that he has by his actions between December 7, 1941 and May 8, 1945 demonstrated his hostility at all times to the government of such nation."

Subdivisions (C) and (D) of Section 32 (a) (2) require amendment. These sections have been construed as permitting the return of property to a limited class of victims of Nazi oppression, provided that they are such victims by reason of a discriminatory law, decree or regulation, so that in many cases many persons of so-called Aryan nationality who have been bitterly hostile to the Nazi regime, or who have been active members of the anti-Hitler underground, are deprived of their property without any opportunity to have such property returned. This is indeed a very questionable reward for the courageous attitude toward the Nazi regime and unjust discrimination, and therefore creates an unnecessary hardship. Justice requires the broadening of the category of cases in which vested property should be returned to German nationals who were in fact our friends.

*AMENDMENT NO. 2*

That Section 32 of the Trading With the Enemy Act of 1917, as amended, be amended by adding after subsection (g) thereof the following new subsection:

> "(h) Any person eligible under this section to file notice of claim for return aggrieved by an order of the Alien Property Custodian denying his claim in whole or in part may obtain review by filing in the District Court of the United States for the District of Columbia within

sixty days after receiving notice of such order a written complaint naming the Custodian as defendant and praying that the order be modified or set aside in whole or in part. A copy of such complaint shall be served upon the Custodian who within sixty days after service on him shall certify and file in said court a transcript of the record of the proceeding in the Office of Alien Property with respect to such claim. Upon good cause shown such time may be extended by the court. Such record shall include the claim in question as filed, such evidence with respect thereto as may have been presented to the Custodian or introduced into the record by him, and any findings or other determinations made by the Custodian with respect thereto. The court may, in its discretion, take additional evidence upon a showing that such evidence was offered to and excluded by the Custodian or could not reasonably have been adduced before him or was not available to him. The court shall enter judgment affirming, modifying, or setting aside the order in whole or in part, and directing a return of the vested property if it finds the facts so require. The judgment of the district court shall be appealable in usual course. Nothing herein contained shall be construed to deny to persons eligible to invoke the judicial remedies afforded by section 9 of this Act the right to do so."

Subdivision (5) of Section 32 (a) provides

"that such return is in the interest of the United States."

It has been held that this provision vests absolute discretion in the Office of Alien Property (*McGrath* v. *Zander*, October 10, 1949, Court of Appeals of District of Columbia, 177 Fed. (2d) 649) and that this discretion is not subject to judicial review.

A discretion vested in an executive, without a provision for review, is contrary to the spirit of the Administrative Procedure Act enacted upon the theory that Administrative Agencies' decisions should always be subject to judicial review.

The suggested amendment remedies this defect in the law.

## *AMENDMENT NO. 3*

That Section 33 of the Trading With the Enemy Act of 1917, as amended, be further amended by striking out, wherever it appears, "April 30, 1949" and inserting in place thereof "April 30, 1952."

Many hardship cases arise by reason of the fact that the time to file claims for return of property under present statutory provisions has expired.

50 U. S. Code, Appendix, Section 33, provides that no return may be made pursuant to Section 9 or 32 unless notice of claim has been filed: in the case of any property or interest acquired by the United States on or after December 18, 1941, by April 30, 1949, or two years from the vesting of the property or interest in respect of which the claim is made, whichever is later.

Section 33 further provides that no action pursuant to Section 9 may be instituted after April 30, 1949, or after the expiration of two years from the date of the seizure by or vesting in the Alien Property Custodian, as the case may be, of the property or interest in respect of which relief is sought, whichever is later.

Many persons who are prisoners in the Soviet-occupied zone and have been such ever since Russia has occupied that zone, were not informed of the vesting of their property, and, therefore, have allowed the time to expire in which to file claims for the return of their property. Therefore, the date of April 30, 1949 should be changed to April 30, 1952, and the time of two years from the vesting of the property to five years, whichever is later.

*AMENDMENT NO. 4*

The Committee further recommends that Section 20 of the Trading With the Enemy Act of 1917, as amended, be amended to read as follows:

"Sec. 20. No property or interest or proceeds shall be returned under this Act, nor shall any payment be made or judgment awarded in respect of any property or interest vested in or transferred to the Alien Property Custodian unless a schedule of the fees to be paid to all agents, attorneys at law or in fact, or representatives, for services in connection with such return or payment or judgment, has been furnished to, and approved in accordance with this section by, the President or such officer or agency as he may designate, or the court, as the case may be. The Alien Property Custodian is authorized (upon request as hereinafter provided) to fix reasonable fees (whether or not fixed under any contract or agreement) for services in connection with the return of or the making of any payment in respect of any such property or interest or proceeds (other than pursuant to an order of the court). The Alien Property Custodian is authorized and requested to mail to each owner or creditor notice of the provisions of this section. No fee shall be fixed under this section unless written request therefor is filed with such Alien Property Custodian before the expiration of sixty days after the mailing of such notice. In the case of nationals of Germany and Japan such notice may be mailed to and the written request may be filed by the duly accredited diplomatic representative of such nation.

"Any person aggrieved by the determination of the Alien Property Custodian may within thirty days after the making of such determination petition the District Court of the United States for the District in which he resides to review the determination and pray that the said determination be modified. A copy of said petition shall be served upon the Custodian who within fifteen days after service on him shall certify and file in said court a transcript of the record of the proceed-

ing in the Office of Alien Property with respect to such determination. Upon good cause shown such time may be extended by the court. Such record shall include the claim in question as filed, such evidence with respect thereto as may have been presented to the Custodian or introduced into the record by him, and any findings or other determinations made by the Custodian with respect thereto. The court may, in its discretion take additional evidence upon a showing that such evidence was offered to and excluded by the Custodian or could not reasonably have been adduced before him or was not available to him. The court shall enter judgment affirming, modifying, or setting aside the determination in whole or in part. The judgment of the District Court shall be appealable in usual course. Any person accepting any fee in excess of an amount approved hereunder, or retaining for more than thirty days any portion of a fee, accepted prior to approval hereunder, in excess of the fee as finally approved, shall be guilty of a violation of this Act."

Under the present statute, as amended, the 10% permitted thereunder is in many cases so small that many claimants are deprived of representation by lawyers and the protection afforded thereby, whereas under the proposed amendment the procedure in relation to a Mixed Claims Commission award, as provided in Section 9 of the Settlement of War Claims Act of 1928 (45 Stat. 254), is adopted.

Respectfully submitted,

*COMMITTEE ON FOREIGN LAW*

DUDLEY B. BONSAL, *Chairman*

DANA CONVERSE BACKUS
THEODORE R. BLACK
PETER BORIE
OTIS B. BOSWORTH
HOBART L. BRINSMADE
ELLIOTT E. CHEATHAM
CHARLES W. CRAWFORD
MARTIN DOMKE
PHANOR J. EDER
JOHN NOBLE, JR.
ANGELO PIERO SERENI
PAUL SMITH, JR.
OTTO C. SOMMERICH
LETICIA A. TEDESCHI-SANT'AGATA
ROBERT F. WEISSENSTEIN

# The Library

SIDNEY B. HILL, *Librarian*

## *LIST OF SELECTED MATERIALS ON COMMERCIAL LAW*

> *"Five Shekels of silver, at the usual rate of interest, loaned by the Temple of Shamash and by I. Company, to Idin and his wife, are payable with interest on sight of the payors at the market-place to the bearer of this instrument."*

The above negotiable instrument, perhaps the oldest known in the world, was written about 2100 B.C. Since this early period the drafting of trade instruments and the development of commercial law have been the concern of those who deal in commerce.

Attention is being focused on all phases of commercial law by the preliminary drafts of the proposed commercial code, which is being prepared by the American Law Institute. Perhaps the function of commercial law has been best expressed by Lord Mansfield:

"The daily negotiations of merchants ought not to depend upon subtleties and niceties, but upon rules easily learned and easily retained because they are the dictates of common sense drawn from the truth of the case." *

American Law Institute. Restatement of the Law of Security as adopted and promulgated by the American Law Institute. 1941. St. Paul. West Pub. Co. 596p.

American Law Institute and the National Commissioners on Uniform State Laws. Uniform Commercial Code. Proposed Final Draft. 1950. 852p.

Arnold, B. M. Proposed Sales Act; Address. 1949. 1949 Md. S.B.A. 214–24.

Association of the Bar of the City of New York. Committee on Uniform State Laws. Report on the Uniform Commercial Code. 1950. 12p.

Automatic Discharge of Negotiable Instruments in the Proposed Commercial Code. 1949. 44 Ill. L. Rev. 88–99.

Bailee's Right to Recover Full Damages—Historically and Critically. 1950. 25 St. John's L. Rev. 51–60.

Baker, R. and Hightower, D. The Western Hemisphere Trade Corporation: a Problem in the Law of Sales. 1947. 22 Tul. L. Rev. 229–63.

* *Hamilton* v. *Mendes*, 2 Burr. 1198, 1214.

Bank Credit as Value—the Commercial Code Article III. 1948. 57 Yale L. J. 1419–26.

Bank Deposits and Collections. 1950. 50 Col. L. Rev. 802–826.

Beers, W. L. The New Commercial Code. 1948. 32 J. Am. Jud. Soc. 107–10.

Behrens, M. F. Jr. Status of an Accommodation Indorser under Section 29 of the Uniform Negotiable Instruments Law. 1949. 23 St. John's L. Rev. 333–8.

Beutel, F. K. Problems of Interpretation under the Negotiable Instruments Law. 1948. 27 Neb. L. Rev. 485–514.

Bogert, G. G. Cases on the Law of Sales. 2d Ed. Foundation Press. 1947.

Brannan, Joseph D. Beutel's Brannan Negotiable Instruments Law. 7th Ed. Cincinnati. W. H. Anderson Co. 1948. 1628p.

Braucher, Robert. Introduction to Commercial Law. Brooklyn Foundation Press. 1950. 308p.

Britton, Wm. E. Handbook of the Law of Bills and Notes. St. Paul, Minn. West Pub. Co. 1943. 1245p.

Brown, Louis M. Manual of Preventative Law. Prentice-Hall, 1950. 346p.

Bugan, Thomas G. When Does Title Pass. Iowa. Wm. C. Brown Co. 1951.

Carry-over Effect of Express Warranties on Subsequent Sales. 1950. 19 Fordham L. Rev. 197–206.

Carter, H. M. The Trust Receipt and the Problem of Recordation or Notice Filing. 1951. Wash. U. L. Q. 30–61.

Chafee, Zechariah, Jr. Reissued Notes. Langdell Hall. Cambridge, Mass. 1942.

Chalmers, Sir Mackenzie D. E. S. Digest of the Law of Bills of Exchange. Promissory Notes. 11th Ed. 1947. 423p.

Charlesworth, John. Principles of Mercantile Law. 7th Ed. Stevens & Sons. 1949. 396p.

Christy, Francis T. Transfer of Stock. 2d Ed. New York. Baker, Voorhis & Co. 1940. 1086p.

Cohen, I. H. Attachment of Property Fraudently Transferred in New York —the Influence of Abstractions on the Rights of Creditors. 1949. 49 Col. L. Rev. 501–31.

Commercial Code. Robert Kramer, Ed. 1951. 16 Law & Contemp. Prob. Parts 1–2.

Commercial Law Journal. 1927 to date. 52v.

Consideration in Negotiable Instruments—the Commercial Code Article III, Section 501. 1948. 57 Yale L. J. 1408–13.

Corbin, A. L. Uniform Commercial Code—Sales; Should it be enacted? 1950. 59 Yale L. J. 821–36.

Corker, C. E. and Landman, B. Jr. Can a Preferred Creditor Be a Holder in Due Course? 1951. 3 Stanford L. Rev. 220–242.

Coughlin, P. F., O'Connor, W. J. Effect of Misrepresentations Inducing Sales Contracts. 1950. 25 Notre Dame Law. 513–20.

Currie, G. R. Buy and Sell Agreements with Respect to Corporate and Partnership Interests. 1950 Wis. L. Rev. 12–27.

Deen, R. B. Jr., Warfield, C. H. Implied Warranties—Should the Doctrine be Limited to Sales Transactions? 1949. 2 Vand. L. Rev. 675–85.

Deitle, C. M. Conversion by Drawee Bank—Book Credit to Payees by Drawee Bank does not constitute payment. 1948. 9 Ohio St. L. J. 541–2.

Douglass, H. L. Discussion on Sales as Proposed in Uniform Commercial Code. 1950. 21 Okla. B. A. J. 808–11.

Dunham, Allison. The New Commercial Code. 1950. 55 Com. L. J. 197–201.

Dunham, Allison. Inventory and Accounts Receivable Financing. 1949. 62 Harv. L. Rev. 588–615.

Eager, Samuel W. Law of Chattel Mortgages and conditional sales and trust receipts with forms. Buffalo, N. Y. Dennis & Co. 1941. 1104p.

Eastwood, Reginald Allen. Contract of Sale of Goods. 2d Ed. 1946. 166p.

Edwards, H. A. States Should Regulate the Activities of Collection Agencies. 1950. 55 Com. L. J. 212–215.

Epton, H. Uniform Commercial Code—A Bird's Eye View. 1950. 21 Okla. B. A. J. 799–803.

Evans, F. E. Jr. Allocation of Risks in Foreign Remittance Transactions—the Commercial Code Article IV, Chapter II. 1948. 57 Yale L. J. 1426–36.

Finklestein, Herman Norman. Legal Aspects of Commercial Letters of Credit with an introduction by Karl N. Llewellyn. New York. Col. Univ. Press. 1930. 390p.

Fictitious Payee and the U.C.C. 1951. 18 U. Chi. L. Rev. 281–93.

Friedman, D. M. Field Warehousing. 1942. 42 Col. L. Rev. 991–1013.

Gilmore, G. & Axelrod, A. Chattel Security. 1947–48. 57 Yale L. J. 517–48, 761–87.

Gilmore, G. Difficulties of Codifying Commercial Law. 1948. 57 Yale L. J. 1341–59.

Glenn, Garrard. Fraudulent Conveyances and Preferences. Rev. Ed. Baker, Voorhis & Co. 1940. 2v.

Glenn, Garrard. Mercantile Collateral Law. New York Practising Law Institute. 1946.

Goldenweiser, E. A. Pritchard on the Federal Reserve Bank Note; Comment. 1947. 55 J. Pol. Econ. 359–69.

Hamilton, W. H. Trade Regulations. New York. Practising Law Institute. 1946. 61–84p.

Handler, M. Cases and Other Materials on Trade Regulation with 1947 Suppl. 1948. New York. Foundation Press. 1949.

Hanna, J. Contemporary Utility of General Assignments. 1949. 35 Va. L. Rev. 539–76.

Hanna, John and MacLachlan, James Angell. Creditors' Rights. Consolidated 4th Ed. Foundation Press. 1951.

Harfield, Henry. Uniform Commercial Code. 1951. 23 N. Y. State Bar Bull. 67–72.

Heindl, W. A. Trust Receipt Financing under the Uniform Trust Receipts Act. 1948. 26 Kent L. Rev. 197–268.

Heisler, E. H. Seller's Recovery when buyer repudiates before completion of manufacture. 1950. 99 U. Pa. L. Rev. 229–44.

Holden, J. M. Suggested Reform of the Law Relating to Cheques. 1951. 14 Modern L. Rev. 33–52.

Horack, F. E. Jr. Future of Uniform Laws—the Commercial Code. 1948. 9 Ohio S. L. J. 555–70.

Horner, Edwin P. The Stop Payment Order. 1950. 2 Baylor L. Rev. 275–302.

Hubachek, B. Drift Toward a Consumer Code. 1949. 16 U. of Chi. L. Rev. 609–34.

Implied Warranty—Retail Food Stores and Sealed Containers. 1950. 3 U. Fla. L. Rev. 380–4.

Invernizzi, F. W. Law of Negotiable Instruments under Proposed Commercial Code. 1949 Md. S. B. A. 224–39.

Ireland, Gordon. Latin American Commercial Law in United States Cases. Washington, D. C. Catholic University Press. 1945.

Ireton, J. F. Proposed Commercial Code—a New Deal in Chattel Security. 1949. 43 Ill. L. Rev. 794–818.

Jeanblanc, L. R. Restitution under the Statute of Frauds: what constitutes an unjust retention. 1950. 48 Mich. L. Rev. 923–60.

Johnson, M. N. A Federal Commercial Code—Some Possibilities under the Constitution. 1947. 45 Mich. L. Rev. 1021–34.

Kane, M. J. Secured Transactions under Proposed Uniform Commercial Code. 1950. 21 Okla. B. A. J. 803–7.

Koessler, Maximillian. Assignment of Accounts Receivable. 1945. 33 Cal. L. Rev. 40–113.

Kothe, S. T. Contracts—Precedent Debt as Consideration in the Law of Contracts and Negotiable Instruments. 1947. 46 Mich. L. Rev. 211–24.

Kripke, Homer. Chattel Paper as a Negotiable Specialty under the Uniform Commercial Code. 1950. 59 Yale L. J. 1209–1227.

Kripke, Homer. "Secured Transactions" Provisions of the Uniform Commercial Code. 1949. 35 Va. L. Rev. 577–616.

Lattin, N. D. Cases and Materials on the Law of Sales. Chicago. Callaghan & Co. 1948.

Lawson, F. H. Passing of Property and Risk in Sale of Goods—a Comparative Study. 1949. 65 Law Q. Rev. 352–66.

Leary, Fairfax Jr. and Husted, T. H. Jr. Approach to Drafting an International Commercial Code and a Modus Operandi under Present Laws. 1949. 49 Colum. L. Rev. 1070–99.

Leary, Fairfax Jr. Clarifications in the Law of Commercial Paper under the Proposed Uniform Commercial Code. 1949. 97 U. Pa. L. Rev. 354–87.

Leary, Fairfax Jr. Deferred Posting and Delayed Returns—the Current Check Collection Problem. 1949. 62 Harv. L. Rev. 905–56.

Leary, Fairfax Jr. Horse and Buggy Lien Law and Migratory Automobiles. 1948. 96 U. of Pa. L. Rev. 455–83.

Lewis, M. E. Proposed New Commercial Code. 1949. 20 Penn. B. A. Q. 131–41.

Lewis, M. E. and Howarth, W. O. Proposed Sales Article of the Uniform Commercial Code. 1950. 21 Penn. B. A. Q. 249–63.

Liabilities of Transferer of Non-negotiable Instruments under Proposed Commercial Code. 1949. 98 U. Pa. L. Rev. 213–23.

Llewellyn, Karl N. Cases and Materials on the Law of Sales. Chicago, Callaghan & Co. 1930.

Llewellyn, Karl N. Commercial Transactions. New York. Practising Law Institute. 1946.

Martin, Charles. Substantive Regulation of Security Devices under the Bankruptcy Power. 1948. 48 Col. L. Rev. 62–86.

McGowan, G. B. Trust Receipts Today. 1948. 20 N.Y.S.B.A. Bull. 348–52.

Merchant Provisions in the Uniform Commercial Code—Sales. 1950. 39 Geo. L. J. 130–9.

Meredith, H. J. Installment Sales under the Metzenbaum Act: Address. 1950. 23 Ohio Bar. 357–61.

Michie Co. Banks and Banking. Permanent Ed. Charlottesville, Va. Michie & Co. 1931–50. 9v.

National Assn. of Credit Men. Credit Manual of Commercial Laws. 1950.

National Conference of Commissioners on Uniform State Laws. Handbook and Proceedings. 1892–to date. 52vols.

Negotiability of Conditional Sales Contracts—the Consumer and Article III of the Commercial Code. 1948. 57 Yale L. J. 1414–19.

Ogden, James M. Law of Negotiable Instruments. 5th Ed. Chicago. Callaghan. 1947. 931p.

Opton, Frank Gerd. Doing Business in America. American Chamber of Commerce. 1949. 97p.

Paget, Sir John Rahere. Law of Banking. 5th Ed. London. Butterworth. 1947. 446p.

Palmer, G. E. Negotiable Instruments under Uniform Commercial Code. 1950. 48 Mich. L. Rev. 255–310.

Payee as a Holder in Due Course in New York. 1950. 2 Syracuse L. Rev. 119–124.

Perrault, A. Quebec Commercial Law. Le Droit Commercial Quebécois: 1923–1947. 1948. 26 Can. B. Rev. 137–46.

Policing Contracts under Proposed Commercial Code. 1950. 18 U. Chi. L. Rev. 146–63.

Pritchard, L. J. The Federal Reserve Bank Note. 1947. 55 J. Pol. Econ. 157–66.

Pritchard, L. J. Pritchard on the Federal Reserve Bank Note: Reply to Comment by E. A. Goldenweiser. 1947. 55 J. Pol. Econ. 360–1.

Private Lawmaking by Trade Associations. 1949. 62 Harv. L. Rev. 1346–70.
Proposed Commercial Code. 1949. 43 Ill. L. Rev. 820–2.
Proposed Uniform Commercial Code; Bank Deposits and Collections. 1950. 50 Colum. L. Rev. 802–26.
Rabel, Caldwell, Jordan and Pugh. Choice of Law under the Uniform Commercial Code. 1950. 10 La. L. Rev. 278–93.
Rabel, Ernest. The Statute of Frauds and Comparative Legal History. 1947. 63 Law. Q. Rev. 174–87.
Rabel, Ernest. Draft of an International Law of Sales. 1938. 5 U. of Chi. L. Rev. 546–65.
Rabel, Ernest. Sales Law in the Proposed Code. 1950. U. Chi. L. Rev. 427–40.
Rafsky, M. Breach of Warranty as a Defense to Action on Negotiable Note by Assignee of Conditional Seller. 1947. 2 Intramural L. Rev. 98–106.
Rapid Transmission of Negotiable Documents of Title for High Speed Shipments under the Proposed Commercial Code. 1949. 44 Ill. L. Rev. 100–6.
Remedies for Total Breach of Contract under the Uniform Revised Sales Act. 1948. 57 Yale L. J. 1360–1388.
Richter, G. R. Jr. Uniform Commercial Code—A Preview. 1949. 24 Calif. S. B. J. 414–23.
Rico, H. R. Rights of Creditors of Beneficiary of Spendthrift Trust—New York Statutory Provisions. 1949. 15 Brooklyn L. Rev. 259–70.
Rohrlich, Chester. Organizing Corporate and Other Business Enterprises. New York. Bender & Co. 1949.
Role of the Check in Accord and Satisfaction—Weapon of the Overreaching Debtor. 1948. 97 U. Pa. L. Rev. 99–110.
Sale of Goods—Innocent Misrepresentations and Conditions. 1950. 13 Modern L. Rev. 362–8.
Sanborn, F. R. Comparative Law and the Law of Commerce. 1949. 16 Brooklyn L. Rev. 21–40.
Schmitthoff, Clive M. Export Trade—A Manual of Law and Practice. 2d Ed. London. Stevens. 1950. 654p.
Schnader, W. A. New Commercial Code: Modernizing our Uniform Commercial Acts. 1950. 36 A. B. A. Jour. 179–82, 252–4.
Scope of Uniform Sales Act. 1950. 25 Wash. L. Rev. 202–4.
Secured Commercial Financing—a symposium. Brainerd Currie, ed. 1948. 13 Law & Contemp. Prob. 553–702.
Seller Not Entitled to Employ other Sections of Uniform Sales Act when unable to establish damages under section used in complaint. 1950. 99 U. Pa. L. Rev. 109–11.
Statute of Frauds in New York as Affecting Contracts for the Payment of Commissions.1947. 16 Fordham L. Rev. 95–105.
Steffen, R. Instruments "Payable at" a Bank. 1950. 18 U. Chi. L. Rev. 55–76.

Taylor, A. L. Indorsements for Collection:—under Negotiable Instruments Law and Uniform Commercial Code. 1950 Wash. U. L. 55–82.

Thayer, Philip Warren. Cases and Materials in the Law Merchant with an introduction by the Right Hon. Robert Alderson, Baron Wright. 1939. 1296p.

Thornton, P. W. Inception of Negotiable Instruments. 1950. 11 U. Pittsburgh L. Rev. 591–608.

Tisdale, R. C. Uniform Commercial Code—Commercial Paper. 1950. 26 N. D. Bar Briefs. 252–72.

Trimble, R. J. Implied Power of National Banks to Issue Letters of Credit and Accept Bills. 1949. 58 Yale L. J. 713–41.

Trimble, R. J. The Law Merchant and the Letter of Credit. 1948. 61 Harv. L. Rev. 981–1008.

Uniform Commercial Code. 1950. 38 Ill. B. J. 316–19.

Uniform Laws Annotated. Brooklyn, N. Y. Edward Thompson Co. 1937–50. 11v.

Verdonk, W. J. Negotiability of Note—Failure of Consideration. 1950. 25 Notre Dame Law. 358–60.

Waite, J. B. Proposed New Uniform Sales Act. 1950. 48 Mich. L. Rev. 603–26.

Ward, W. and Rosenthal, M. S. Need for Uniform Commercial Code in Foreign Trade. 1950. 63 Harv. L. Rev. 589–92.

Warranties of Kind and Quality under the Uniform Revised Sales Act. 1948. 57 Yale L. J. 1389–1407.

Williams, H. R. Security Interests in Goods, Fixtures and Equipment of Merchants and Manufacturers. 1947. 25 Tex. L. Rev. 589–612.

Williston, Samuel. The Law Governing Sales of Goods at Common Law and under the Uniform Sales Act. Rev. Ed. New York. Baker, Voorhis. 1948. 4v.

Williston, Samuel. Law of Sales in the Proposed Uniform Commercial Code. 1950. 63 Harv. L. Rev. 561–88.

Witherspoon, G. B. Why a New Commercial Code? 1949. 54 Com. L. J. 291–5.

Witherspoon, J. P. Jr. Force Majeure Clause and Partial Impossibility of Seller's Performance. 1949. 27 Tex. L. Rev. 775–91.

Zelermyer, W. Rescission and Damages for Breach of Warranty. 1950. 2 Syracuse L. Rev. 82–92.

Zollman, Carl. Law of Banks and Banking. Kansas City. 1936. 12v.

# CHEMICAL BANK & TRUST COMPANY

*Founded 1824*

**165 Broadway, New York**

## CONDENSED STATEMENT OF CONDITION

*At the close of business March 31, 1951*

### ASSETS

| | |
|---|---|
| Cash and Due from Banks | $ 438,789,536.45 |
| U. S. Government Obligations | 398,058,947.11 |
| State, Municipal and Public Securities | 142,669,205.25 |
| Other Bonds and Investments | 7,704,823.85 |
| Loans and Discounts | 722,499,424.15 |
| Banking Houses | 497,729.24 |
| Other Real Estate | 2,367,204.43 |
| Credits Granted on Acceptances | 21,689,547.43 |
| Accrued Interest and Accounts Receivable | 4,345,742.48 |
| Other Assets | 2,614,575.30 |
| | $1,741,236,735.69 |

### LIABILITIES

| | | |
|---|---|---|
| Capital Stock | $25,400,000.00 | |
| Surplus | 75,000,000.00 | |
| Undivided Profits | 17,201,621.67 | $ 117,601,621.67 |
| Reserve for Contingencies | | 4,583,482.19 |
| Reserves for Taxes, Expenses, etc. | | 5,183,777.09 |
| Dividend Payable April 1, 1951 | | 1,270,000.00 |
| Acceptances Outstanding | $26,310,335.35 | |
| (*Less own acceptances held in portfolio*) | 1,549,938.17 | 24,760,397.18 |
| Other Liabilities | | 22,225,647.05 |
| Deposits | | 1,565,611,810.51 |
| | | $1,741,236,735.69 |

*Securities carried at $131,022,478.17 in the foregoing statement are deposited to secure public funds and for other purposes required by law.*

---

*Charter Member New York Clearing House Associatio*
*Member Federal Reserve System*
*Member Federal Deposit Insurance Corporation*

# J. P. MORGAN & CO.

INCORPORATED

NEW YORK

•

**Testamentary Trusts** **Voluntary Trusts**
**Pension Trusts** **Corporate Trusts**
**Executorships**

•